

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4251 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AP PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner

MR VB GHARANIA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. It is not in dispute that the petitioner has been promoted during the pendency of this Special Civil Application on the post of Police Inspector during the pendency of this Special Civil Application, in the month of September 1987. The learned counsel for the petitioner now restricted the claim of the petitioner

only for deemed promotion on the post of Police Inspector from the year 1982.

3. From the reply filed by the respondent, it is not in dispute that in the year 1982, the case of the petitioner has been considered for promotion to the post of Police Inspector, but he was not found suitable for the same because of overall record and his records were found to be unsatisfactory. Shri Raval contended that the refusal for promotion in the year 1982 to the post of Police Inspector was only on the ground that at that time, one departmental inquiry was pending against him but subsequently he was exonerated in that inquiry and as such his case has to be considered afresh.

4. I do not find any substance in this contention. From the reply filed by the respondent, it is clear that he was not superseded in promotion because of pendency of departmental inquiry. The petitioner's case has been considered and it has to be because merely on account of pendency of departmental inquiry, the respondent cannot deny him the right of consideration for the promotion. The petitioner was adjudged unsuitable on the basis of other service record and not because of pendency of departmental inquiry. The petitioner has admitted in para 10 of the Special Civil Application that he received adverse remarks in the year 1974-75 and once or twice thereafter, meaning thereby, the petitioner had adverse remarks in the service record for the year 1974-75 and for some undisclosed years thereafter. It is also not in dispute that the petitioner was served with adverse remarks for the year 1981-82 though the petitioner has made submission that he made a representation against those adverse remarks, but the respondent has denied that any such representation has been made. The petitioner has not produced on record any material in support of his contention that he made a representation against the adverse remarks which have been communicated to him for the year 1981-82 and in the absence of any material on record, it is difficult to believe the averment of the petitioner that he made a representation against the adverse remarks communicated to him for the year 1981-82. So it is a case where the petitioner has, in his service record, sufficient adversity. The learned counsel for the petitioner does not dispute that the criteria for promotion to the post of Police Inspector is of proved merits and efficiency. In the presence of this adverse service material, I fail to see any illegality in the action of the respondent to supersede the petitioner in the matter of promotion to the post of Police Inspector.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

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(sunil)